

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/04/2003

Coram

Honourable Mr.Justice N.DHINAKAR
and
Honourable Mr.Justice S.ASHOK KUMAR

Referred Trial No.4 of 2003
and
Criminal Appeal No.397 of 2003

Referred Trial No.4 of 2003

The Additional Sessions Judge,
Fast Track Court No.V,
Chennai. ... Referring Officer

-Vs-

Chandrasekar @ Sekar ... Respondent

Criminal Appeal No.397 of 2003

Chandrasekar @ Sekar ... Appellant

vs.

State of Tamil Nadu,
rep. by the Inspector of
Police, P3 Vysarpadi Police
Station, Chennai-39.
(Crime No.552/2001) ... Respondent

Prayer: Reference on and Appeal against the judgment dated 21.2.2003 in
Sessions Case No.26 of 2002 delivered by the Additional Sessions Judge, Fast
Track Court □ V, Chennai.

!For Appellant in : Mr.N.Doraisamy
C.A.No.397/2003 and respondent
in R.T.No.4/2003

^For Respondent in : Mr.I.Subramanian
C.A.No.397/2003 Public Prosecutor.

:J U D G M E N T

(Judgment of the court was delivered by N.DHINAKAR, J.)

As the Reference and the appeal arise out of a common sessions case, we dispose them of by the following common judgment.

2. The appellant, challenging his conviction and sentence of death imposed by the learned II Additional Sessions Judge, Chennai, for an offence of murder, has preferred the above appeal and the learned Sessions Judge has made the reference for the confirmation of death sentence imposed upon him. The appellant, who, in this judgment, will be referred to as 'the accused', was tried on a charge of murder with an allegation that at 2.00 a.m. on 3.9.2001, he caused the death of his son, Shanmugasundaram @ Shanmugam, by cutting his neck and severing it and that during the course of the same transaction, he attempted to murder P.Ws.1 and 2. The learned Sessions Judge,

as stated earlier, finding the accused guilty under Section 302 I.P.C. and sentencing him to death, imposed a sentence of seven years R.I. under Section 307 I.P.C. framed under Charge No.2 for attempting to murder P.Ws.1 and 2.

3. The case of the prosecution is as follows:-

P.W.1 is the wife of the accused and she is also the mother of the deceased. P.W.2 is the mother-in-law of the accused. P.Ws.3 and 4 are the sons of the accused and P.W.5 is the daughter of the accused. P.W.6 was a tenant in the house, where the accused, the deceased and their family members were living. During the relevant period, they were at Vyasarpadi and prior to that, P.W.1 along with her husband, who is the accused, was living at Pune, where the accused was working as a goldsmith. He suffered loss in the business and therefore, migrated to Kasi, where also he did not have better times. He returned to Chennai along with his wife about five months prior to the date of incident and after his return, he and his wife, P.W.1, were staying in the house of P.W.2. Later, they shifted to the house, where the occurrence had taken place. The deceased, during the relevant period, was working in the passport office. Three days prior to the date of incident, a quarrel ensued between the accused and the deceased as the accused was blamed by the deceased for not taking care of the family and was living a life of a vagabond. The accused abused his son and P.W.1 intervened and pacified them. At about 11.00 a.m. on 2.9.20 01, the accused found fault with the family for not serving him proper food and the deceased took his father to task by telling him that he has already asked him to go out of the house and P.W.1 had to intervene to pacify her husband and son. This is said to be the immediate provocation for the accused to attack his son, the deceased in the case. On the night of 2.9.2001, all the family members took their bed and at about 2.00 a.m., P.W.1 woke up, on hearing the cries of her son. P.W.1, on waking up, found her son lying face downwards and saw the accused cutting him with M.O.1, hacksaw blade, on the neck. On hearing the alarm of P.W.1, P.W.2 woke up and when P.Ws.1 and 2 intervened, they were also cut by the accused. The accused was having a knife on one hand and the head of his son on the other hand. P.W.1 cried aloud and the accused, proclaiming that he has despatched his son to the other world, left the house, after throwing the head in the kitchen and while leaving, he took the hacksaw blade along with him. P.W.1 became

unconscious on seeing this ghastly act. P.W.3 took P.Ws.1 and 2 to Government Stanley Hospital, where they were examined by the Casualty Medical Officer, P.W.13. P.W.13, on examining P.W.2, found the following injuries:1. Laceration right ring finger 5 cm. x 1 x 1/2 cm. 2. Lacerated right forearm 10 cm. x 1/4 x 1/4 cm. 3. Laceration left hand (2) in Nos. each 4 x 1/2 x 1/2 cm. 4. Laceration right back 4 x 1/4 x 1/4 cm. 5. Laceration right arm 6 x 1/2 x 1/2 cm.

Ex.P.14 is the copy of the accident register issued by the doctor in respect of the injuries found on her person. He also examined P.W.1 and on her person, found the two following injuries, for which, he issued Ex.P.15, the copy of the accident register and Ex.P.16, the wound certificate:1. Lacerated left fore-arm 15 x 2 x 3 cm. 2. Lacerated right forearm 7 x 2 x 1 cm.

An intimation was sent to the police station and on receipt of the said intimation, P.W.18, the Inspector of Police, proceeded to Government Stanley Hospital, where, finding P.W.1, questioned her. She gave a statement. The said statement is Ex.P.1. P.W.18 returned to the police station with the statement, Ex.P.1 and registered a case in Crime No.552 of 2001 against the accused under Sections 302 and 324 I.P.C. by preparing express reports. Ex.P.21 is a copy of the printed first information report. He took up investigation in the crime.

4. P.W.18 reached the scene of occurrence and in the presence of P.W.7 and another, prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.23. The scene of occurrence was caused to be photographed. He seized blood-stained earth and sample earth, M.Os.7 and 8, under a mahazar, Ex.P.24, attested by witnesses. The inquest over the head, the trunk and both put together were conducted between 6.00 a.m. and 7.00 a.m. in the presence

of panchayatdars and at the time of inquest, P.Ws.3 to 5 were examined. The inquest reports are Exs.P.25 to P.27. After the inquest, he issued a requisition to the medical officer for conducting autopsy.

5. On receipt of the requisition, P.W.15, the Police Surgeon and Professor, Forensic Medicine Department, Government Stanley Medical College, Chennai, conducted autopsy and found the following appearance at the time of post-mortem: Moderately nourished body of an adult male with an abrasion on the back of right shoulder 3 x 2 cms. Laceration on back of neck 6 x 2 x 1 cm. Laceration 1 cm. below the above injury measuring 4 x 2 x 1 cm. Laceration 2 cm. below to the above injury measuring 4 x 2 x 2 cm. Laceration below the left ear 6 x 2 x 1.5 cm. complete separation of head from the trunk of the level of C2 and C3 level exposing fractured bones, muscles, blood vessels and nerves including spinal cord. Extravasation of blood seen in to the surrounding soft tissues. The edges are irregular and enacted on examination both the head and trunk approximated to each other and found to be the one and the same individual. All the above injuries are anti-mortem in nature.

The doctor issued Ex.P.17, the post-mortem certificate, with his opinion that death was on account of shock and haemorrhage due to decapitation of head from

the trunk.

6. P.W.18, continuing with his investigation, questioned P.Ws.1 and 2 and recorded their statements. He questioned other witnesses in the case on the same day, whose statements were also recorded. The accused was arrested near a bus stop at Mullainagar at 2.00 p.m. in the presence of P.W.16 and another. He was questioned and his statement was recorded. The admissible portion of the said statement is Ex. P.28. He took the police party and the witnesses to a thorny bush, where hacksaw blade, M.O.1, blood-stained dhoti, M.O.2, were produced and they were seized under a cover of mahazar, Ex.P.29, attested by the same witnesses. The accused was sent to Court for remand. The material objects were sent to Court with a request to forward them for analysis. The Court, by sending the material objects, obtained Exs.P.12 and P.13, the reports of the chemical analyst and serologist, which are to the effect that hacksaw blade, M.O.1, contain human blood and dhoti, M.O.2, contain human blood of 'B' group tallying with the blood group of the deceased. The officer gave a requisition to the Magistrate to record the statements of the witnesses under Section 164 Cr.P.C. and after questioning the doctors and recording their statements on 21.9.2001, he filed the final report against the accused on 22.9.2001.

7. The accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him. He denied his complicity in the crime. He did not examine any witness on his side.

8. The learned counsel appearing for the appellant-accused contents before this Court that since P.Ws.1 to 5 are closely related to the deceased, their evidence cannot be accepted. He also attacks the evidence of P.W.6 as one, who was obliged to the other witnesses, as he was a tenant in the same premises. He further submits that there is delay in laying the complaint and finally submits that the facts do not show that it is a rarest of rare case, where the sentence of death should have been imposed on the accused. On the contentions, we have heard the learned Public Prosecutor and also perused the recorded evidence.

9. The prosecution, by examining P.W.15, established the cause of death, since, according to him, Shanmugasundaram died on account of decapitation of head and to that effect, he has also issued Ex.P.17, the post-mortem certificate. He has further stated that the said injury could have been caused with a weapon like M.O.1. The fact that Shanmugasundaram died on account of homicidal violence is not in dispute.

10. The prosecution before the trial Court examined six persons as eye witnesses. They were examined as P.Ws.1 to 6 and of the six witnesses, P.Ws.1 to 5 are closely related to the accused. The deceased, being the son of the accused, was also closely related to the accused. Therefore, the contention of the learned counsel that since relatives were examined, their evidence is to be rejected cannot be accepted. It is also to be remembered that the occurrence had taken place in the house and the witnesses, who were the inmates of the house during the relevant period, become natural witnesses and in the absence of any material to show that they

could not have been present in the house at the time of incident on that date, it is difficult for the Court to hold that they could not have witnessed the incident. On the contrary, two of the witnesses have suffered injuries during the course of the same transaction and they are P.Ws.1 and 2. They were also treated by the doctor, P.W.13 and the wound certificates were also marked through him. The injuries found on P.Ws.1 and 2, who have stated in their evidence that they suffered injuries when they interfered, also establish their presence at the scene of occurrence. P.W.1, in fact, is the wife of the accused and no wife will come out with a false version implicating her husband in the crime, if he has not committed it. The evidence of the witnesses, P.Ws.1 to 5, is also supported by P.W.6, a tenant and his evidence cannot be rejected on the ground that he was a tenant in the same premises along with the deceased and his family. Their evidence is also supported by medical evidence. On the evidence, which is overwhelming in nature, we are of the view that the learned Sessions Judge was justified in convicting the accused under Section 302 I.P.C.

11. The learned Sessions Judge, in our view, ought to have framed separate charges under Section 307 I.P.C. for attempting to murder P.Ws.1 and 2, instead of framing one charge. The learned Sessions Judge ought to have seen that when two witnesses have suffered injuries and if the case of the prosecution is that the accused has attempted to murder two persons, he should have framed separate charges under two heads and if he decides to frame one charge, he should have specified in the charge that it is for two counts. The learned Sessions Judge did not even indicate under charge No.2 that the said charge is for two counts, that is, for attempting to murder P.W.1 and attempting to murder P.W.2. The trial Court must always keep in mind that charges cannot be framed mechanically or by simply incorporating the contents of the final report filed by the investigating officer before it and must apply its mind to the materials placed before it by the investigating officer, before framing charges. A duty is cast upon the Public Prosecutor to look at the charge, after it was framed by the Court and that if he finds that the charge was not properly framed, he should bring it to the notice of the Court and he cannot be a silent spectator, if, by mistake, a charge is not framed or if a wrong charge is framed, especially when the charges are framed in the presence of the accused, his counsel and the Public Prosecutor.

12. The final question that is to be decided by us is the nature of punishment that is to be awarded to the accused. Section 302 I.P.C. contemplates two kinds of punishments and they are 1) life imprisonment and 2) death sentence. To award a death sentence, the Court should always ask itself the following questions and then test it to determine whether it is a rarest of rare case, which warrants death sentence to the accused. They are: 1) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence? and 2) Whether the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

13. In BACHAN SINGH vs. STATE OF PUNJAB [A.I.R. 1980 SC

898], the Supreme Court formulated certain guidelines while stating that they are only illustrative and not exhaustive and some of the guidelines are: (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability; (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'; (iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances; (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. The Supreme Court further held that in rarest of rare cases, when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded and the community may entertain such sentiment in the following circumstances and they are, (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community; (2) When the murder is committed for a motive which evinces total depravity and meanness; e.g., murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland; (3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation; (4) When the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed; (5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community and if upon taking an overall global view of all the circumstances in the light of the aforesaid prepositions and taking into account the answers to the questions posed by way of the test for the rarest of rare case, the circumstances of the case are such that death sentence is warranted, the Court then only can award the death sentence.

14. It is also relevant to note at this stage the observations of the Supreme Court in the judgment cited supra, wherein, the Supreme Court has stated that what is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case and more often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them.

The Supreme Court further held that this so because 'style is the man' and in many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator and that is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate water-tight compartments. In a sense, the Supreme Court held, to kill is to be cruel and therefore, all murders are cruel, but such cruelty may vary in its degree of culpability and when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist. The Supreme Court went on to further observe that it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the Courts in accord with the sentencing policy writ large in Section 354 (3) and Judges should never be blood-thirsty and hanging of murderers has never been too good for them. Facts and figures, albeit incomplete, furnished by the Union of India, show that in the past, Courts have inflicted the extreme penalty with extreme infrequency – a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter and it is, therefore, imperative to voice the concern that Courts, aided by the broad illustrative guidelines indicated, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354 (3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence is an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality and that ought not to be done save in the rarest of rare cases, when the alternative option is unquestionably foreclosed.

15. The observations of the Supreme Court, which we have extracted above, speak for themselves and we cannot improve upon the above observations of the Supreme Court and therefore, applying the said principles enunciated by the Supreme Court, are of the view that the facts in this case do not bring it under the caption 'rarest of rare case'. We, accordingly, while confirming the conviction of the accused under Section 302 I.P.C., set aside the sentence of death imposed upon him and instead, he is sentenced to imprisonment for life. As we have already imposed sentence of imprisonment for life under Section 302 I.P.C. on the accused, we feel that no separate sentence is called for under Charge No.2 framed under Section 307 I.P.C. and therefore, the sentence of seven years R.I. imposed upon him under the said Section is set aside, though his conviction under the said Section is confirmed. With the above modification in sentence, the appeal is dismissed. The reference is, accordingly, rejected.

Index : Yes

Website: Yes

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To

- 1.The Additional Sessions Judge, Fast Track Court No.V, Chennai.
- 2.-do- Thro' The Principal Sessions Judge, Chennai.
- 3.The District Collector, Chennai.
- 4.The Director General of Police, Chennai.
- 5.The Superintendent, Central Prison, Vellore.
- 6.The Superintendent, Central Prison, Chennai.
- 7.The Inspector of Police, P3 Vyasarpadi Police Station, Chennai-39.
- 8.The Public Prosecutor, High Court, Madras.

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